

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 2631 - SB 3319

February 22, 2010

SUMMARY OF BILL: Broadens the Class A felony of aggravated rape of a child to include victims 10 years of age or less and increases the penalty from a Range III sentence (40 to 60 years) to life without parole. Broadens the Class A felony of rape of a child to include victims at least 10 years of age but less than 13 years old. Requires the death penalty for the killing of a child that is committed in the perpetration or attempt to perpetrate rape of a child or aggravated rape of a child.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,311,800/Incarceration*

Assumptions:

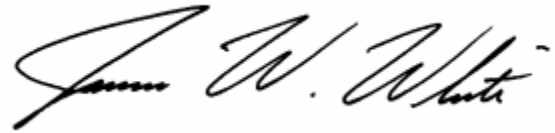
- According to the Department of Correction (DOC), the average length of sentence for an offender convicted of rape of a child is 20.37 years. There has been an average of 61 admissions for rape of a child in each of the past 10 years. DOC estimates that eight percent (5) of the victims were between the ages of three and ten.
- Eighty-five percent of the sentence for life without parole (60 years) would be 51 years (60 years x 85%). Five additional offenders in the first year would serve an additional 30.63 years (51 years – 20.37 years) as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in one additional offender in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on six offenders serving additional time on their sentences.
- According to DOC, the average operating cost per offender per day for calendar year 2010 is \$59.86. The cost per offender at 51 years is \$1,115,057.12 (\$59.86 x 18,627.75 days). The cost per offender at 20.37 years is \$445,366.78 (\$59.86 x 7,440.14 days). The maximum cost in the tenth year (30.37 years) is \$664,005.43 (\$59.86 x 11,092.64 days). The additional cost of increasing the average sentence length per offender is \$218,638.65 (\$664,005.43 - \$445,366.78). The total additional operating cost for six offenders is \$1,311,831.90 (\$218,638.65 x 6).
- Any impact on the caseloads for the state trial courts can be accommodated within existing judicial resources without an increased appropriation.

- Currently the killing of a child in the perpetration of aggravated rape of a child or rape of a child constitutes first degree murder punishable by life imprisonment, life imprisonment without parole, or by death, with the sentence to be determined in a separate hearing for consideration of any aggravating or mitigating circumstances. As a result of the proposed bill, the offense would be punishable by death only. Mandating a death sentence upon conviction without any consideration of mitigating circumstances, this portion of the bill would likely be found to violate the Eighth Amendment to the U.S. Constitution. See *Woodson v. North Carolina*, 428 U.S. 280 (1976); and *Roberts v. Louisiana*, 431 U. S. 633 (1977).

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc